

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

QUINTARIUS JERMAINE WALLS,

Defendant-Appellant.

UNPUBLISHED

June 26, 2014

No. 314999

Kent Circuit Court

LC No. 12-003103-FH;

12-003105-FH

Before: RONAYNE KRAUSE, P.J., and HOEKSTRA and WHITBECK, JJ.

PER CURIAM.

Following a plea of nolo contendere, defendant was convicted of receiving and concealing a stolen motor vehicle, MCL 750.535(7), and stealing or retaining a financial transaction device without consent, MCL 750.157n(1). He was sentenced to a term of 18 months to 5 years' imprisonment for the receiving and concealing a stolen motor vehicle conviction, with 155 days' credit applied, and a concurrent term of 12 months to 4 years' imprisonment for the stealing or retaining a financial transaction device without consent conviction, with 155 days' credit applied. Defendant appeals by leave granted. We affirm.

Defendant first argues the trial court erred in sentencing him for stealing or retaining a financial transaction device without consent because it sentenced him to a minimum term of imprisonment that exceeded the recommended minimum sentence range under the legislative guidelines. However, because defendant fully served the minimum sentence for his stealing a financial transaction device conviction, his challenge to the length of his minimum sentence for that conviction is moot. See *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994) ("because defendant has already served his minimum sentence, we decline to review this issue. Where a subsequent event renders it impossible for this Court to fashion a remedy, an issue becomes moot." (citations omitted)). Consequently, we will not address this issue. See *People v Richmond*, 486 Mich 29, 37; 782 NW2d 187 (2010), clarified 486 Mich 1041 (2010) ("[w]hen the issues raised by a party on appeal are clearly moot, an appellate court should ordinarily decline to address the substantive issues raised in the appeal . . .")

Defendant next argues the trial court erred by ordering him to pay \$6,000 in restitution because the trial court determined this figure on the basis of the recommendation in the presentence investigation report (PSIR). Generally, an order of restitution is reviewed for an abuse of discretion. *People v Gubachy*, 272 Mich App 706, 708; 728 NW2d 891 (2006) (citation

omitted). However, because this alleged error is unpreserved, it is reviewed for plain error. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

In *People v Gahan*, 456 Mich 264, 276; 571 NW2d 503 (1997), our Supreme Court ruled a defendant's failure to request an evidentiary hearing waives his right to a hearing to determine the amount of restitution owed.

Although defendant did not receive such an evidentiary hearing [to determine the amount of restitution], that does not give rise to error in this case because, as the Court of Appeals correctly noted below, at sentencing defendant did not request an evidentiary hearing regarding the amount of restitution that was properly due. This was a waiver of his opportunity for an evidentiary hearing . . . [*Id.*]

The Court further stated:

It is incumbent on the defendant to make a proper objection and request an evidentiary hearing. Absent such objection, the court is not required to order, sua sponte, an evidentiary proceeding to determine the proper amount of restitution due. Instead, the court is entitled to rely on the amount recommended in the presentence investigation report which is presumed to be accurate unless the defendant effectively challenges the accuracy of the factual information. [*Id.* at 276-277 n 17.]

See also *People v Grant*, 455 Mich 221, 235, 242-244; 565 NW2d 389 (1997) (Because the defendant failed to object to the presentence investigation report's restitution recommendation and failed to provide any evidence supporting a different restitution figure, the Court held the trial court was not required to make express findings of fact on the amount of restitution and it properly relied on the presentence investigation report in determining the amount of restitution).

Defendant waived his opportunity for an evidentiary hearing to determine the amount of restitution owed because he failed to request a hearing or object to the amount of the restitution. See *Gahan*, 456 Mich at 276. In fact, defendant's counsel affirmatively requested the trial court follow the presentence investigation report's restitution recommendation. On this record, the trial court was permitted to rely on the restitution amount recommended in the PSIR. *Id.* at 276-277 n 17; *Grant*, 455 Mich at 235. There was no plain error.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck